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10/779,960	02/17/2004	Michael E. LaSalle	STG-001	9118
36822 7590 05/28/2008 GORDON & JACOBSON, P.C. 60 LONG RIDGE ROAD SUITE 407 STAMFORD, CT 06902			EXAMINER HARMON, CHRISTOPHER R	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/779,960
Filing Date: February 17, 2004
Appellant(s): LASALLE, MICHAEL E.

Jay P. Sbrollini
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/28/08 (as amended) appealing from the Office action mailed 11/28/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final rejection filed concurrently with the Appeal Brief 4/28/08 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,920,916	Pagdin	1-1960
5,516,255	Tygard	5-1996
6,135,704	Seaberg	10-2000
5,516,255	Milholen et al.	11-1976

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pagdin (US 2,920,916) in view of Tygard (US 5,516,255).

Pagdin disclose a method of handling material comprising automatically arranging bags into groups by a conveyor 10 system to an accumulator station 12; lifting and transporting groups into a cross stacked configuration via suction/stacker head 19; see figures 1 and 3, column 2, line 21. Bags of material are inherently packaged at an upstream point in the process. Suction head 19 automatically lifts and transports

arranged groups of elongate bags by applying opposing clamping forces by outer portion of member 50 along outer sides of bags while preventing bag slippage by inner portion of member 50; see column 3, lines 45+. The multi-row stack is thereby palletized and lifted for transport to a customer. The bottom group/tier of units 12' is also cross stacked, see figure 1.

The lifting and transporting device of Pagdin uses suction on the top surface of the arranged bags therefore does not directly disclose applying two opposed clamping forces however Tygard teaches an overhead clamping device using two pairs of clamping arms 30 central support bar 20 and also that only one pair can accomplish the same task if desired, see figures 1-3B; column 8, lines 50+.

Regarding claim 12, Tygard uses a central core support structure 20 (considered to fit into a slot in a conveyor belt system) operable disposed between cross stacked products for preventing sliding; see figure 3B.

Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pagdin (US 2,920,916) in view of Seaberg (US 6,135,704) in further view of Tygard (US 5,516,255).

The lifting and transporting device of Pagdin uses suction on the top surface of the arranged bags therefore does not directly disclose applying opposed clamping forces that alone are sufficient to lift the group, however Seaberg discloses a similar lifting device for lifting a layer of cross stacked products using opposing clamping forces that alone are sufficient to lift the stacked layer; see figures 1 and 3.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the clamp device of Seaberg in the invention to Pagdin as a substitute for the lifting/clamping device for transferring articles. Note that Seaberg discloses the use of two pairs of clamping arms however Tygard recognizes in a similar invention using two pairs of clamping arms 30 that only one pair can accomplish the same task if desired, see column 8, lines 50+.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use only one pair of clamps (opposing clamping forces) in the modified invention to Pagdin for transporting the goods.

Regarding claim 12, Seaberg describes using a central core support structure (considered to fit into a slot in a conveyor belt system) operable disposed between cross stacked products for preventing sliding; see column 5, lines 54+.

Claims 13-14 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pagdin (US 2,920,916) in view of Tygard (US 5,516,255) and AAPA and further view of Milholen et al. (US 3,992,049).

Pagdin does not directly disclose the automatic lifting device comprising at least one support structure disposed between bags received in a slot of a conveyor system however Milholen et al. disclose a lifting device 10 with central bar support structures 106, 108, 110, and 112 which are disposed between layered products for support in lifting/transport; see figure 3. Central bar supports enter into/out of slots in tray 220 during the operation, which is considered part of a conveyor belt system; see figure 2.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the teachings of Milholen et al. in the modified invention to Pagdin for keeping separate the bags during their transport.

Regarding claims 13-14 and 26-27, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to include chain, rope, or wire in the support structure for operably separating the products because Appellant has not disclosed that these structures provide an advantage, are used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Appellant's invention to perform equally well with a bar support for separation.

(10) Response to Argument

The arguments presented are not persuasive. The limitation of the support structure performing a function of "while not providing resistance to the opposed clamping forces" is not distinguishable over the prior art. Note that during the operation of appellant's claimed invention a support structure placed between cross-stacked packages as disclosed by appellant (see figure 3) would inherently provide resistance to the opposed clamping forces of fingers 305. The examiner notes that appellant has disclosed the function of the support member to prevent side by side products from being misaligned, however the prior art would accomplish the same function in operation. Note that support structure 20 of Tygard is positioned perpendicular to the opposed clamping forces (see figure 3b). The support structure when positioned as claimed would prevent side by side products from sliding against one another in the

described manner. One of ordinary skill in the art would recognize the predictable use of the support structure for performing the claimed function. Appellant's claims do not distinguish themselves over the prior art as providing for a novel process.

In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Seaberg directly recognizes placing a central support structure inbetween products for preventing misalignment; column 5, lines 55+.

Note that a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. While evaluating obviousness, one must ask whether the improvement is more than the predictable use of prior-art elements according to their established functions; see *KSR Int. v. Teleflex 550 US*__ (2007).

To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art; *ibid*.

The analysis need not seek out precise teachings directed to the challenged claimed specific subject matter, for a court can consider the inferences and creative steps a person of ordinary skill in the art would employ. Under the correct analysis, any

need or problem known in the field and addressed by the patent can provide a reason for combining the elements in the manner claimed; *ibid*.

Regarding the use of the support structure it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961).

Further note regarding claim 25, that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding the variations of the support structure ie. rope, chain, etc. note that appellant has not provided for the criticality of any one claimed structure. The examiner's previous conclusion that the support structure of Tygard (ie. bar 20) provides the claimed function and that a rope, chain, or strand is not a critical element that differs in function which equates to a novel apparatus or process. One of ordinary skill in the art would have been able to substitute any one of the claimed elements as a matter of design choice for providing the same function.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 3700

Respectfully submitted,
/Christopher R Harmon/
Primary Examiner, Art Unit 3721

Conferees:
/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721

/Marc Jimenez/
TQAS TC 3700